

ORIGINAL

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FILED
08 JAN 11 PM 4:28
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *POV* DEPUTY

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12
13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

16 WALGREEN CO. dba
17 WALGREENS #06255; 1 HUNTER,
18 LLC; 1 LAKE, LLC,
19 Defendants.

No. '08 CV 0072 JM POR

Plaintiff's Complaint

I. SUMMARY

1
2 1. This is a civil rights action by plaintiff Barbara Hubbard
3 (“Hubbard”) for discrimination at the building, structure, facility, complex,
4 property, land, development, and/or surrounding business complex known as:

5 Walgreens #06255
6 621 "I" Street
7 Chula Vista, CA 91910
8 (hereafter “the Store”)

9 2. Hubbard seeks damages, injunctive and declaratory relief, attorney
10 fees and costs, against Walgreen Co. dba Walgreens #06255; 1 Hunter, LLC;
11 and, 1 Lake, LLC (collectively “Walgreens”) pursuant to the Americans with
12 Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California
13 statutes.

14 II. JURISDICTION

15 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
16 1343 for ADA claims.

17 4. Supplemental jurisdiction for claims brought under parallel
18 California law—arising from the same nucleus of operative facts—is predicated
19 on 28 U.S.C. § 1367.

20 5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

21 III. VENUE

22 6. All actions complained of herein take place within the jurisdiction
23 of the United States District Court, Southern District of California, and venue is
24 invoked pursuant to 28 U.S.C. § 1391(b), (c).

25 IV. PARTIES

26 7. Walgreens owns, operates, or leases the Store, and consists of a
27 person (or persons), firm, or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. She requires the use of motorized wheelchair and a mobility-equipped vehicle, when traveling about in public. Consequently, Hubbard is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Store is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Hubbard visited the Store and encountered barriers (both physical and intangible) that interfered with—if not outright denied—her ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Hubbard, the barriers at the Walgreens include, but are not limited to, the following:

- The tow away signage posted is not the correct colors, nor does it contain the required information (such as a phone number);
- All four accessible parking spaces and adjacent access aisles have slopes and/or cross slopes that are greater than 2.0%;
- The spaces designated as van accessible do not have the correct signage – there is no separate (additional) sign stating “Van Accessible;”
- The detectable warnings provided are located on the ramp rather than before it;
- Both ramp landings (in the parking small) are smaller than 60” x 60”;
- There is no stop sign painted or detectable warnings provided where the accessible route passes into the vehicular way;
- There is a sign stating that accessible “restrooms (are) available upon request” and are through a door marked “employees only;”
- The accessible stall door is not self-closing;

- 1 • The disposable seat cover dispenser's operable part is mounted more than
- 2 40 inches from the floor;
- 3 • The disposable seat cover dispenser is mounted over the back grab bar and
- 4 behind the water closet, causing it to be out of reach range requirements;
- 5 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 6 needed at the water closet;
- 7 • The location of the toilet tissue dispenser causes it to be an obstruction to
- 8 the use of the side grab bar;
- 9 • The toilet tissue dispenser is mounted more than 36 inches from the back
- 10 wall;
- 11 • The mirror is mounted more than 40 inches from the floor;
- 12 • The pipes underneath the lavatory are not properly wrapped; and,
- 13 • The operable parts of both paper towel dispensers are located more than
- 14 40 inches above the floor.

15 These barriers prevented Hubbard from enjoying full and equal access.

16 11. Hubbard was also deterred from visiting the Store because she
17 knew that the Store's goods, services, facilities, privileges, advantages, and
18 accommodations were unavailable to physically disabled patrons (such as
19 herself). She continues to be deterred from visiting the Store because of the
20 future threats of injury created by these barriers.

21 12. Hubbard also encountered barriers at the Store, which violate state
22 and federal law, but were unrelated to her disability. Nothing within this
23 Complaint, however, should be construed as an allegation that Hubbard is
24 seeking to remove barriers unrelated to her disability.

25 13. Walgreens knew that these elements and areas of the Store were
26 inaccessible, violate state and federal law, and interfere with (or deny) access to
27 the physically disabled. Moreover, Walgreens has the financial resources to
28 remove these barriers from the Store (without much difficulty or expense), and

1 make the facility accessible to the physically disabled. To date, however,
2 Walgreens refuses to either remove those barriers or seek an unreasonable
3 hardship exemption to excuse non-compliance.

4 14. At all relevant times, Walgreens has possessed and enjoyed
5 sufficient control and authority to modify the subject property to remove
6 impediments to wheelchair access and to comply with the Americans with
7 Disabilities Act Accessibility Guidelines and Title 24 regulations. Walgreens
8 has not removed such impediments and has not modified the subject property to
9 conform to accessibility standards. Walgreens has intentionally maintained the
10 subject property in its current condition and has intentionally refrained from
11 altering the subject property so that it complies with the accessibility standards.

12 15. Hubbard further alleges that the (continued) presence of barriers at
13 the facility is so obvious as to establish Walgreens' discriminatory intent.¹ On
14 information and belief, Hubbard avers that evidence of this discriminatory intent
15 includes Walgreens' refusal to adhere to relevant building standards; disregard
16 for the building plans and permits issued for the facility; conscientious decision
17 to the architectural layout (as it currently exists) at the facility; decision not to
18 remove barriers from the facility; and allowance that Walgreens' property
19 continues to exist in its non-compliant state. Hubbard further alleges, on
20 information and belief, that Walgreens is not in the midst of a remodel, and that
21 the barriers present at the facility are not isolated (or temporary) interruptions in
22 access due to maintenance or repairs.²

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28 ¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

Hubbard v. Walgreens

Plaintiff's Complaint

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Hubbard incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Walgreens discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Store during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Hubbard alleges that Walgreens can easily remove the architectural barriers at the Store without much difficulty or expense, and that Walgreens violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Walgreens to remove the Store’s barriers, then Walgreens violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. On information and belief, the Store was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Walgreens violated the ADA by designing or constructing (or both) the Store in a manner that was not readily accessible to the physically disabled public—including Hubbard—when it was structurally practical to do so.³

Failure to Make an Altered Facility Accessible

26. On information and belief, the Store was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

28. Here, Walgreens altered the Store in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Hubbard—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Walgreens violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Store, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory relief) that Walgreens violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

33. Hubbard incorporates the allegations contained in paragraphs 1 through 30 for this claim.

34. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

37. Here, Walgreens discriminated against the physically disabled public—including Hubbard—by denying them full and equal access to the Store. Walgreens also violated Hubbard’s rights under the ADA, and, therefore, infringed upon or violated (or both) Hubbard’s rights under the Disabled Persons Act.

38. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

39. She also seeks to enjoin Walgreens from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Hubbard incorporates the allegations contained in paragraphs 1 through 30 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. Walgreens' aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

46. Hubbard was damaged by Walgreens' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

47. Hubbard also seeks to enjoin Walgreens from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. Hubbard incorporates the allegations contained in paragraphs 1 through 13 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

1 51. Hubbard alleges the Store is a public accommodation constructed,
2 altered, or repaired in a manner that violates Part 5.5 of the Health and Safety
3 Code or Government Code § 4450 (or both), and that the Store was not exempt
4 under Health and Safety Code § 19956.

5 52. Walgreens' non-compliance with these requirements at the Store
6 aggrieved (or potentially aggrieved) Hubbard and other persons with physical
7 disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant
8 to Health and Safety Code § 19953.

9 X. PRAYER FOR RELIEF

10 WHEREFORE, Hubbard prays judgment against Walgreens for:

- 11 1. Injunctive relief, preventive relief, or any other relief the Court deems
12 proper.
- 13 2. Declaratory relief that Walgreens violated the ADA for the purposes of
14 Unruh Act or Disabled Persons Act damages.
- 15 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
16 California Civil Code (but not both) according to proof.
- 17 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 18 5. Interest at the legal rate from the date of the filing of this action.

19
20 DATED: January 10, 2008

LAW OFFICES OF LYNN HUBBARD

21
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23 LYNN HUBBARD, III
24 Attorney for Plaintiff
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⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Walgreens
Plaintiff's Complaint

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LAW OFFICES OF LYNN HUBBARD (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

DEFENDANTS

WALGREEN CO. dba WALGREENS #06255; 1 HUNTER, LLC; 1 LAKE, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY:

DEPUTY

08 CV 0072 JM POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 PTF DEF Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/10/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

146355

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 146355 - BH
* * C O P Y * *
January 11, 2008
16:32:05**

Civ Fil Non-Pris
USAO #: 08CV0072 CIVIL FILING
Judge.: JEFFREY T MILLER
Amount.: \$350.00 CK
Check#: BC# 20553

Total-> \$350.00

**FROM: HUBBARD V. WALGREEENS
CIVIL FILING**